

BRB No. 98-0278

LOYLE D. EADS)	
)	
Claimant-Respondent)	DATE ISSUED:
)	
v.)	
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Compensation Order - Award of Attorney's Fee of Jeana F. Jackson, District Director, Office of Workers' Compensation Programs, United States Department of Labor.

Timothy W. Porter (Wm. Roberts Wilson, Jr., P.A.), Jackson, Mississippi, for claimant.

Traci M. Castille (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Compensation Order - Award of Attorney's Fee (No. 6-152033) of District Director Jeana F. Jackson rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. See *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant's counsel, having successfully represented claimant in a claim filed under the Act, filed a fee petition for work performed before the district director, requesting 35.1 hours of attorney services rendered at an hourly rate of \$125, and one-half of an hour of non-attorney work performed at a rate of \$65 per hour, for a total fee of \$4,420. Employer filed objections to this fee request. In a Compensation Order, the district director disallowed the one-half hour requested for non-attorney work, reduced both the hourly rate and the number of hours requested for attorney services provided to claimant, and awarded counsel a fee of \$3,060, representing 30.6 hours of services rendered at an hourly rate of \$100.

On appeal, employer challenges the attorney's fee awarded to claimant's counsel, incorporating the objections it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

Initially, we reject employer's contention that claimant's counsel utilized an improper billing method and, thus, the number of hours awarded to claimant's counsel by the district director should be reduced to acceptable incremental amounts. This contention was not raised by employer in its objections to counsel's fee petition which it filed with the district director below; thus, we will not address it. See *Bullock v. Ingalls Shipbuilding, Inc.* 27 BRBS 90 (1993) (*en banc*) (Brown and McGranery, JJ., concurring and dissenting), *modified on recon. en banc.* 28 BRBS 102 (1994), *aff'd mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993); *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988).

Employer additionally challenges the hourly rate as well as the number of hours awarded to counsel by the district director. In considering counsel's fee petition, the district director noted employer's objections and thereafter reduced both counsel's requested hourly rate, from \$125 per hour to \$100 per hour, and the number of hours requested, from 35.6 to 30.6. Employer's assertions on appeal are insufficient to meet its burden of proving that the district director abused her discretion in this regard; thus, we decline to further reduce or disallow the hourly rate or the number of hours approved by the district director.¹ See *Ross v. Ingalls*

¹Contrary to employer's contention that it tendered all benefits to claimant in February 1997, we note that employer withdrew its settlement offer to claimant on

Shipbuilding, Inc., 29 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988).

Accordingly, the district director's Compensation Order - Award of Attorney's Fee is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

August 25, 1997 and thereafter made a final payment of disability benefits and interest to claimant on August 27, 1997. See LS-208 dated August 25, 1997. In any event, only .75 hours of work were performed after February 1997, and the district director reasonably awarded a fee for this work.